UNITED
NATIONS

AT

Administrative Tribunal

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AT/DEC/747
15 July 1996

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 747

Cases No. 637: KREMER
No. 642: GOURDON

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Francis Spain; Mr. Mayer Gabay;

Whereas, on 17 July 1995, Henri Julien Kremer, a former staff member of the United Nations, filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 7 November 1995, the Applicant, after making the necessary corrections, again filed an application in which he requested, under article 12 of the Statute of the Tribunal, the interpretation of Judgement No. 656, rendered by the Tribunal on 21 July 1994;

Whereas the application contained pleas which read (in part) as follows:

> "4. After having recognized, in paragraph XX of its Judgement, that I was entitled to the repatriation grant, the Tribunal ordered, in paragraph XXII, that I should be paid that grant but did not, however, make any mention of interest.
>
> 5. The Tribunal may have considered that payment of such interest was self-evident, ... If that is the case, I should like to request that the Tribunal be so kind as to make this interpretation clear and state what interest rate is applicable.

6. If, however, the Tribunal omitted to take a decision on that part of my submission inadvertently, I should like to request that it ... take a supplementary decision on this issue."

Whereas the Respondent filed his answer on 12 January 1996;

Whereas, on 17 July 1995, Alain André Marie Gourdon, a former member of the Joint Inspection Unit (JIU), filed an application that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, on 12 October 1995, the Applicant, after making the necessary corrections, again filed an application in which he requested, under article 12 of the Statute of the Tribunal, the interpretation of Judgement No. 656, rendered by the Tribunal on 21 July 1994:

Whereas the application contained pleas which read (in part) as follows:

"While the Tribunal did not say so, it seems self evident that ... the repatriation grant should carry interest from 1 January 1991 to 28 June 1995, at four per cent per annum ... [as requested in the initial application].

Although the Tribunal in paragraph XXII [of its Judgement No. 656] awarded payment of the repatriation grant, it made no explicit mention of interest payments.

[The Applicant requests therefore that the Tribunal:]

(a) give an explicit answer to the question of the payment of interest;

...

(b) and agree that the amount requested by the Applicant be paid as interest ..." (Translation by the Tribunal)

Whereas the Respondent filed his answer on 1 December 1995;

Whereas the Applicant filed written observations on 3 January 1996;

Whereas the facts in the cases have been set forth in Judgement No. 656.

Whereas the Applicants' principal contention is:

The Tribunal acknowledged that the Applicants were entitled to the repatriation grant but omitted to mention payment of interest, as requested by the Applicants in their pleas.

Whereas the Respondent's principal contention is:

Payment of interest is not an automatic right but requires an explicit order of the Tribunal. Payment of interest was not ordered by the Tribunal and is not appropriate because the Respondent's refusal to pay the repatriation grant was a reasonable exercise of his discretion. It was a good faith interpretation of the applicable texts, an interpretation previously upheld by the Tribunal in its Judgement No. 408, Rigoulet (1987). In these circumstances, damages, in the form of interest, are not justified.

The Tribunal, having deliberated from 2 to 15 July 1996, now pronounces the following judgement:

I. The Tribunal, in Judgement No. 656 of 21 July 1994, ordered the Respondent to pay the Applicants the repatriation grant they had claimed. In compliance with this order, the Respondent paid the Applicants the amount of the grant, but did not pay interest thereon.

II. The issue now raised by the Applicants is whether the Tribunal, in its Judgement No. 656, intended that the Applicants should be entitled, in addition to the repatriation grant, to the payment of interest thereon. The issues presented in both cases are identical, and the Tribunal, therefore, considers the claims of the two Applicants jointly, as it did in Judgement No. 656.

III. The Applicants contend that, as they had sought payment of interest, as well as the payment of the repatriation grant in their pleas, it follows that, payment of interest is implicit in the Tribunal's order, or that the Tribunal erred in not including it in the order. That error should be rectified.

IV. The Tribunal holds that adding interest to its awards is not an automatic right. It is for the Tribunal to decide, taking into account all the circumstances of the case, whether interest should be awarded. Payment of interest must be specifically ordered and cannot be considered as implicit in the Tribunal judgements. In this case, the Tribunal, in the exercise of its discretion, decided not to award interest on the repatriation grant.

V. For the foregoing reasons, the applications are rejected.

(Signatures)

Samar SEN
President

Francis SPAIN
Member

Mayer GABAY
Member

Geneva, 15 July 1996

R. Maria VICIEN-MILBURN
Executive Secretary